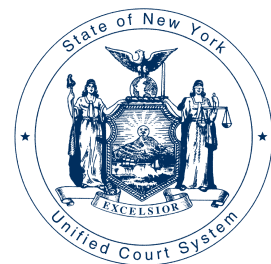


The Bronx Criminal Division: *Merger After Five Years*



OCTOBER 2009

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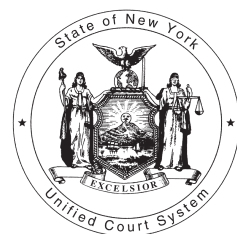


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Executive Summary

In November 2004, the court system undertook the bold experiment of merging the operations of two separate criminal courts – the Bronx County Criminal Court and the Criminal Term of Bronx County Supreme Court – into a single, streamlined trial court of criminal jurisdiction known as the Bronx Criminal Division. For the first time in New York, misdemeanors and felonies are now being resolved in the same court, thanks to the dedication and cooperation of judges and nonjudicial staff from both courts and the willingness of the entire criminal justice community – the District Attorney’s Office, defense bar and other agencies – to work collaboratively with the court system to ensure the fair and timely resolution of criminal matters.

Five years on, a special study group appointed to conduct a frank assessment of the Criminal Division has concluded that the court system’s merger experiment is neither a success nor a failure. While merger has not yet proved to be a wholly effective solution in the Bronx, it has shown enough promise to believe that the original goals of merger – improving the timeliness and efficiency of criminal proceedings – can still be achieved if certain improvements are implemented.

The Criminal Division was conceived as a direct response to a criminal caseload crisis in the Bronx, including escalating felony backlogs and rapidly-increasing misdemeanor filings. The goals of merger were to overcome the jurisdictional and operational barriers that prevented the court system from efficiently directing judges, nonjudicial personnel and other resources to where they were most needed at any given time based on caseload trends, and to enhance overall trial capacity – the most important factor driving the resolution of criminal cases – by pooling together a larger complement of judges available to seamlessly handle both misdemeanors and felonies.

The Criminal Division has enabled the Bronx to adjudicate misdemeanor cases more efficiently and effectively than other counties in New York City. Misdemeanor trial capacity has improved markedly, and backlogs have been kept in check despite continued extensive increases in new filings. Unfortunately, merger has not achieved most of the hoped-for goals in connection with felony cases: the number of felony trials has decreased, the felony backlog has increased and the average age of pending felony cases has grown older.

Some of the factors and trends that contributed to the Criminal Division’s failures were outside the court system’s control, including:

- the steady decline in superior court informations (SCIs) whereby defendants plead guilty early in the proceedings and waive the much lengthier grand jury indictment process

- the spike in criminal court arraignments and the corresponding need to assign judges to sit in arraignment parts on nights, weekends and holidays, thereby significantly draining the Criminal Division's trial capacity
- the layout of the Bronx Hall of Justice, which was designed long before merger was conceived, and is not well-suited to the timely admission of a much larger than anticipated volume of court users nor to the timely physical production of over 300 prisoners a day

It is the responsibility of the court system to develop effective solutions to these and other problems identified by the study group, and to take steps to reduce pending backlogs and enhance the Criminal Division's felony trial capacity. Among the study group's recommendations are:

- immediately establish special court parts to address the oldest pending misdemeanor and felony cases
- eliminate mixed caseloads in the conference court parts to ensure each case type is handled separately and receives appropriate treatment (shorter adjournments in misdemeanors) and to increase calendar sizes for both case types
- improve trial capacity by identifying additional judges to assign to the Criminal Division, and by assigning additional judicial hearing officers to try misdemeanors
- bolster arraignment operations by assigning a judge to sit exclusively in the night arraignment part, schedule a second weekend part only when necessary, and assign volunteer Civil Court Judges to sit in weekend parts
- use video court appearances to reduce the number of prisoners that must be produced in the courthouse, and work with corrections officials to implement screening technology to streamline prisoner production

The Bronx Criminal Division represents a meaningful effort by judges, court staff and other criminal justice system participants to transcend the structural restrictions and inefficiencies of our two-tiered criminal court system and make more efficient use of court resources in the face of difficult caseload and fiscal challenges. For the first time in New York, two entirely separate courts of criminal jurisdiction were merged into one, and the results, though partly disappointing, suggest that merger holds more than enough promise to merit our continued support. Indeed, if the recommendations in this report can be implemented, we are confident that they will substantially improve the Criminal Division's operating efficiency and enable it to meet its original goals of providing fair, prompt and quality criminal justice to the residents of Bronx County.

The Bronx Criminal Division: *Merger After Five Years*

I. Introduction

FIVE YEARS AGO, THE COURT SYSTEM UNDERTOOK A BOLD EXPERIMENT to address a growing crisis in criminal caseloads. By essentially merging the operation of the Bronx County Criminal Court into the Criminal Term of the Bronx County Supreme Court, court administrators hoped to overcome numerous systemic impediments to the timely resolution of criminal proceedings in the Bronx. Creating a merged court out of two distinct courts of criminal jurisdiction – each with its own personnel, processes, and culture – was by no means a small undertaking. Through the dedicated efforts of judges and nonjudicial employees of the two courts, and the collaboration of the defense bar, the District Attorney’s Office, and other criminal justice agencies, an integrated Bronx Criminal Division was born. For the first time, misdemeanors and felonies could be resolved in the same court, and the full panoply of judicial and administrative resources could be brought to bear on burgeoning caseloads.

The merged court has demonstrated some success in preventing the misdemeanor caseload from growing, despite a significant increase in filings. Nevertheless, the misdemeanor backlog remains high. At the same time, due in part to an increase in indictments and consistent with a citywide trend, the felony backlog – and the proportion of older felony cases – has grown substantially. Thus, five years on, the Bronx merger has not yet proved to be a wholly effective solution. The time has come to evaluate why merger has not met its goals, and to determine what can be done to address its shortcomings. Accordingly, a study group was formed in Spring 2009 to examine the impact of merger and to make recommendations for improvements (the study group members are listed in Appendix A). In addition to reviewing extensive statistical data, the study group interviewed the Criminal Division’s former and current Administrative Judges, a number of the Court’s judges, key non-judicial personnel involved in the management and operation of the Court, and representatives of the public and private defense bar, the District Attorney’s Office and the NYC Department of Correction (the individuals who were interviewed are listed in Appendix B).

II. The Merger Experiment

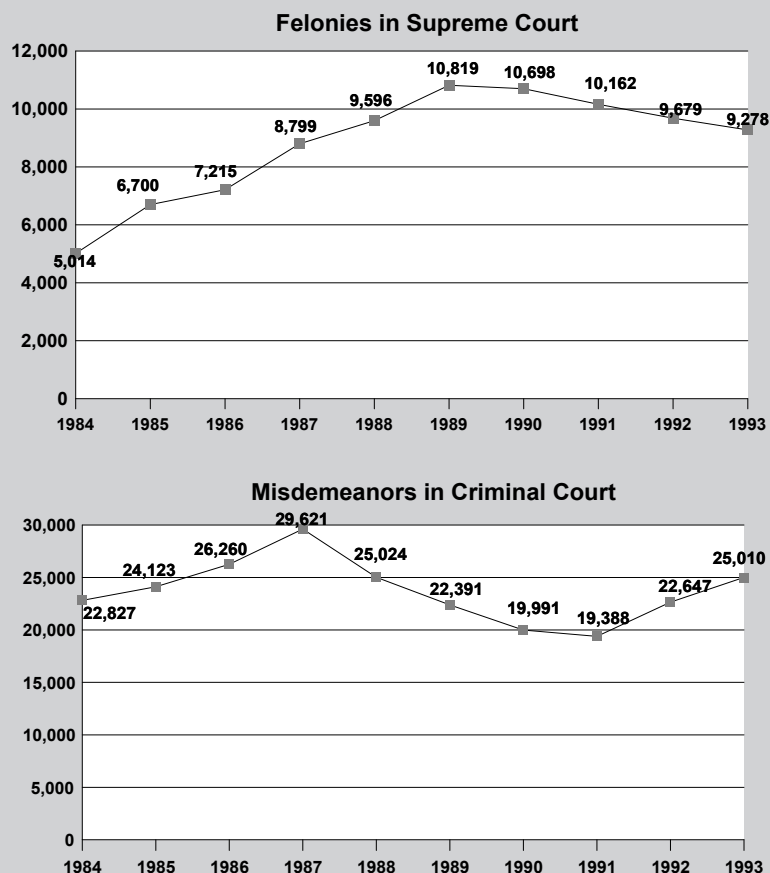
THE BRONX CRIMINAL DIVISION WAS CREATED IN NOVEMBER 2004 to give the court system a new, more efficient means of coping with changing trends in criminal caseloads in the Supreme Court and the Criminal Court. Consolidating the two separate and distinct criminal tribunals removed jurisdictional and operational obstacles that had created backlogs in both misdemeanor and felony dispositions, and positioned judicial resources for more effective deployment in the future. With a fuller complement of judges available to handle both misdemeanors and felonies, it was hoped that the Criminal Division would revitalize the court system's ability to maximize case dispositions.

A. Historical Background

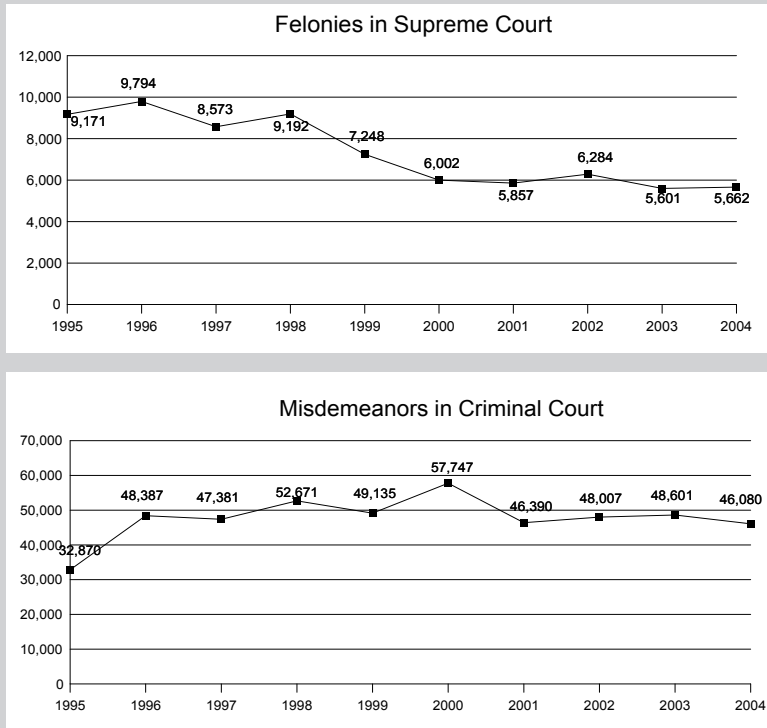
Merger was part of a decades long effort to meet the court system's duty to adjudicate criminal cases swiftly and fairly. During the mid-1980's and early-1990's, felony cases throughout New York City skyrocketed while misdemeanor cases remained flat. The jump in felony cases caused a severe backlog in hearing and disposing of felony cases, forcing prosecutors, defendants, crime victims, and police to wait many extra months for routine hearings and trials. Because the New York Constitution freezes the number of Supreme Court Justices that can be elected in each jurisdiction, the Judiciary exercised its authority to assign judges from other courts – including the Criminal Court – to preside over felony hearings and trials in Supreme Court and help alleviate the delays. Although not eliminated entirely, the felony backlog was reduced.

In the decade prior to merger, however, a new dynamic took hold in New York City. Felony arrests began to steadily decline, while misde-

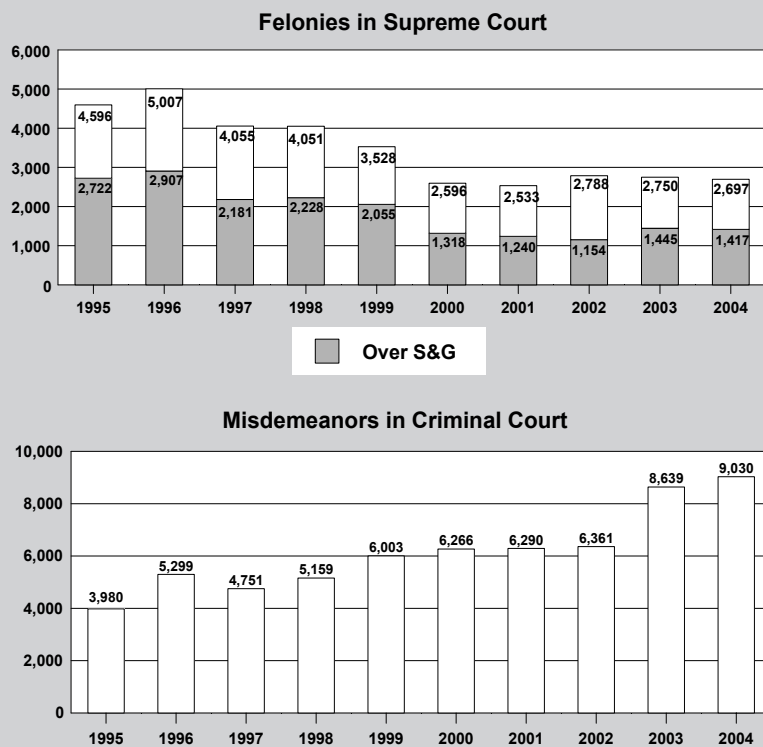
CASE FILINGS IN THE BRONX PRE-MERGER (1984–1993)



CASE FILINGS IN THE BRONX PRE-MERGER (1995–2004)



PENDING CASES IN THE BRONX PRE-MERGER



meanor arrests soared. During the ten-year period from 1995 to 2004, the number of felony cases in Bronx County dropped by 38%, while the number of misdemeanor cases rose by 40% over the entire ten-year period.

Despite the increased allocation of judicial resources to Supreme Court, at the time of merger 53% of the felony cases pending in the Bronx exceeded the court system's target standards for timely disposition.¹ At the same time, the jump in misdemeanor cases caused the Criminal Court backlog to spike sharply, leaving more than 9,000 pending cases to be resolved by only 17 judges. More than 50% of these pending cases were over the case disposition standard. Clearly, there were not enough judges in the Criminal Court to effectively handle the burgeoning misdemeanor caseload, yet re-assigning judges back to that court from the Supreme Court would only exacerbate the significant delays that a majority of the felony cases faced in that jurisdiction.

As the criminal caseloads of the two courts fluctuated, it became apparent that incrementally redirecting resources from court to court would not

¹ For felony cases, standards and goals guidelines provide that a final disposition should be reached within 180 days of the filing of an indictment or superior court information. For misdemeanor cases, the guidelines, first implemented in 2002, provide that a final disposition should be reached within 90 days of arraignment (see Appendix 3).

be an adequate remedy for the respective backlogs and delay. The structural limitations inherent in having two separate tribunals adjudicate criminal cases were apparent: there was not sufficient administrative flexibility to meet the immediate crisis and still permit efficient redeployment in the face of inevitable future shifts in caseload. Accordingly, the merger of the two Bronx courts with criminal jurisdiction was the logical experimental framework for utilizing limited resources in the most efficient manner possible to address simultaneously the backlog in misdemeanor cases and the unacceptable delays in disposing of felony cases.

B. STRUCTURE OF THE MERGED COURT

After much study and preparation, the Criminal Division was established in November 2004. The post-merger Criminal Court retains its preliminary jurisdiction over all criminal cases, as well as responsibility for disposition of violations. All other cases not disposed of at arraignment are adjourned and automatically transferred to Supreme Court, where they enter a three-tiered structure. Cases flow from intake, to motion/conference and problem-solving parts, to trial parts.

The merger left Criminal Court with two daytime arraignment parts, one evening arraignment part, one weekend arraignment part, two summons parts (one is a calendar part presided over by a judicial hearing officer, the other is used on a part-time basis for trials) and a desk appearance ticket part. Other than summons cases, all matters not disposed of on first appearance are transferred to the Criminal Division of Supreme Court.

The merger created three tiers within the Supreme Court through which all misdemeanors and felonies flow. Initially, matters transferred from the Criminal Court are sent to one of three intake parts: the Misdemeanor Conference Part, Part A (felony non-narcotics cases), or Part B (felony narcotics cases). Misdemeanor cases in the Misdemeanor Conference Part are calendered for a single appearance. If resolved at this juncture, the case remains in the part for sentencing; if not resolved, the case is adjourned to a motion/conference part. Similarly, in the two intake felony parts, if an indictment is waived and a plea entered, the case remains in the part for sentencing; if the case is indicted and not resolved, the case is adjourned to a motion/conference part. Unlike the misdemeanor intake part, felony cases can remain in the felony intake parts for more than one appearance before being sent to a motion/conference part.

All cases not disposed of at intake are adjourned to a motion/conference part.² Except for specialized cases, matters adjourned from the intake part proceed to mixed felony and misdemeanor motion/conference parts. These general parts handle all pre-trial activity until cases are ready for trial. Six of the mixed motion/conference parts handle non-narcotics

² Cases that begin with an indictment by direct grand jury presentation skip the intake phase and go directly to a motion/conference part.

cases, two handle narcotics cases and one handles juvenile offender, child abuse and certain sex crime cases. This second tier also contains a “facilitation” part presided over by a judicial hearing officer that is devoted to resolving old cases or pushing them to trial, as well as a hybrid part also presided over by a judicial hearing officer that conducts post-release supervision hearings and, upon consent of the parties, misdemeanor trials. When the merger began, there was an additional motion/conference part devoted entirely to disposing of approximately 1,500 of the oldest pending misdemeanor cases. When that task was completed, that part was converted to an additional trial part, although it has been re-opened on a temporary basis from time to time.

In addition to the mixed felony and misdemeanor motion/conference parts, the second tier also includes six problem-solving court parts. The Domestic Violence part handles criminal domestic violence cases formerly dealt with in the Criminal Court’s and the Supreme Court’s separate DV parts. The Integrated Domestic Violence part handles related family, matrimonial and criminal cases pertaining to a single family where the underlying issue is domestic violence. The Bronx Treatment Court operates as a separate part handling eligible drug treatment-related cases. The compliance part receives post-conviction cases from Criminal Court and all three tiers of the Criminal Division and oversees monitoring and compliance; on alternate days, this part also handles the Mental Health Court calendar and violations of probation. Initially, the second tier also included a part handling gun cases, which also functioned as a motion/conference part processing non-narcotic misdemeanor cases.

Cases not disposed of in the motion/conference or problem-solving parts continue on to the Criminal Division’s trial parts. There are now 25 trial parts that handle trial-ready misdemeanor and felony cases. One of the trial parts is a dedicated domestic violence trial part, although it also handles other types of cases when available. Cases ready for trial are routed to the trial parts through the Court’s trial coordinator’s office.

With the transfer of functions to the Criminal Division, 15 judges who had been sitting in Criminal Court were assigned to work along with the judges already sitting in Supreme Court; 12 of those judges were designated as Acting Supreme Court Justices (the other three had previously received that designation). With these judges joining the judges already sitting in Supreme Court, the Criminal Division, at commencement, had a total of 48 judges. Because pursuant to administrative rule a Criminal Court Judge with less than two years experience is ineligible for designation as an Acting Supreme Court Justice, such judges could serve only in the Criminal Court’s parts of preliminary jurisdiction, and two such judges remained in the Criminal Court. Otherwise, all judges were eligible for service in any of the Criminal Division’s three tiers.

III. Merger's Impact on Caseloads

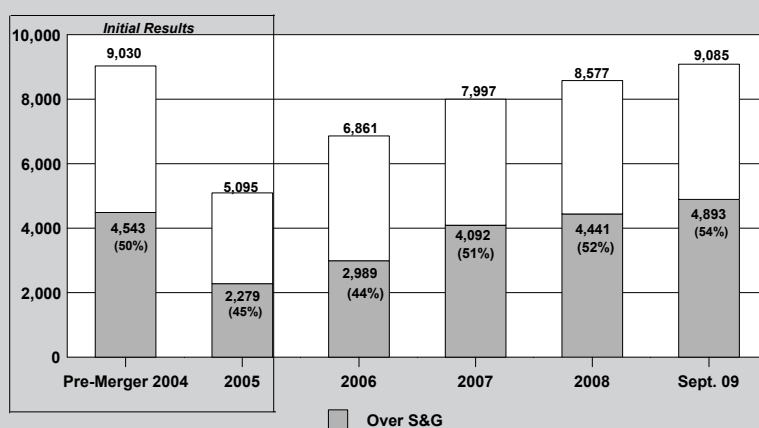
A. MISDEMEANOR CASELOADS

MERGER INITIALLY ACHIEVED ONE OF ITS PRIMARY GOALS – reduction of the misdemeanor caseload. In 2004, the year before merger, the misdemeanor caseload in Bronx Criminal Court had spiked to more than 9,000 pending cases. In the first year after merger, the misdemeanor caseload was reduced to approximately 5,000. Since this initial success, however, the misdemeanor backlog has steadily grown, and is now back to pre-merger levels.

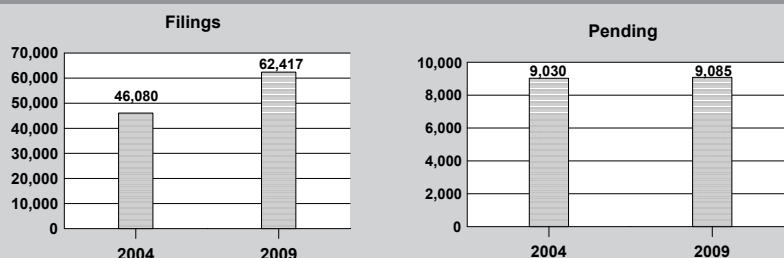
The dramatic initial improvement in the misdemeanor backlog was largely attributable to the establishment of a motion/conference part dedicated to disposing of pending misdemeanor cases that exceeded the 90-day standards and goals benchmark. This part was successful primarily for two reasons: assignment of an experienced and especially effective judge, and the willingness of the District Attorney to extend attractive plea offers. Once the backlog in old misdemeanor cases had been reduced, however, the standards and goals part was discontinued, although it has been revived for limited periods from time to time.

These results must be viewed, however, in the overall context of the increasing number of criminal cases since merger began. Since 2004, misdemeanor filings in the Bronx have grown by 35%. Despite this very substantial increase in filings, however, the number of pending misdemeanors is currently at pre-merger levels. Thus, merger has proven to be a successful tool for coping with the surge in misdemeanor filings. Moreover, the percentage of misdemeanor cases beyond the standards and goals guideline is only 4% higher today than at the start of merger. In this regard, the Bronx stands apart from the other

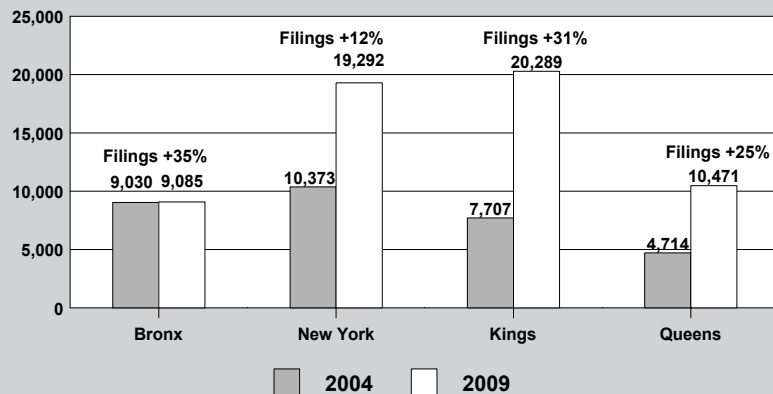
PENDING MISDEMEANORS IN THE BRONX



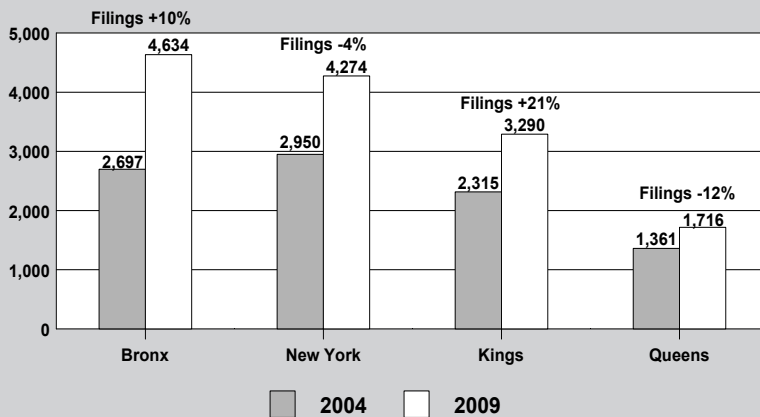
BRONX MISDEMEANORS



PENDING MISDEMEANORS IN NYC (2004 vs 2009)



PENDING FELONIES IN NYC (2004 vs 2009)



counties in New York City, which since 2004 have seen large increases in the number and age of their pending misdemeanor inventories.

B. FELONY CASELOADS

Merger has not achieved its goal of reducing the number of pending felonies that exceed the standards and goals deadlines. Unlike the experience with misdemeanors, there have been substantial increases in the size and age of the Court's pending felony caseload. Felonies pending in the Bronx rose from 2,697 in 2004 to 4,634 as of September 2009 – an increase of 72%. During this same period, the percentage of pending cases exceeding standards and goals grew from roughly half of the total number of pending cases to nearly two-thirds of the total pending cases.

Other counties in New York City have also experienced large increases in the number and age of their felony

inventories during this period. Thus, with or without merger, it is likely that Bronx County would have experienced increases in its felony backlog, although the increases over the past five years arguably have been greater in the Bronx than elsewhere.

IV. Factors Contributing to the Successes and Failures of Merger

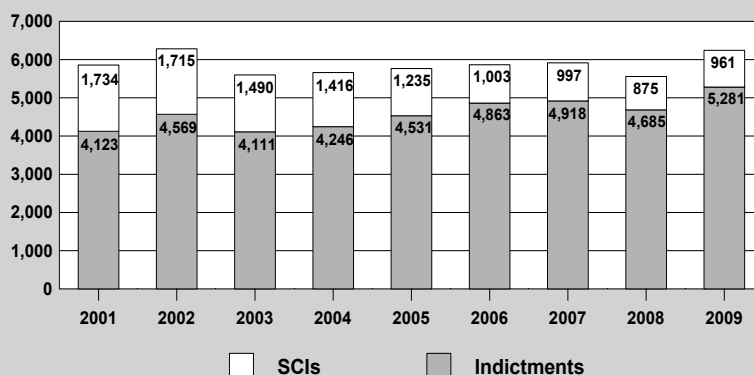
THE MERGED COURT'S ABILITY TO ACHIEVE ITS GOAL OF FAIR AND TIMELY CRIMINAL CASE DISPOSITIONS has been affected by a number of factors, including the impact of wider systemic trends, the structural framework of merger and the design of the courthouse itself.

A. WIDER SYSTEMIC TRENDS

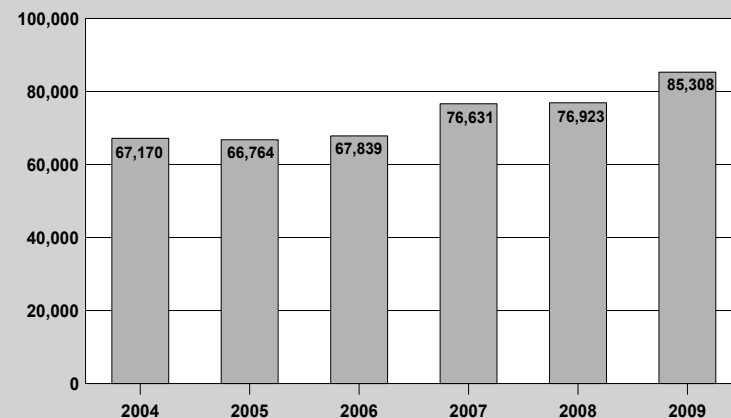
Several factors beyond the control of the court system have likely contributed to the Criminal Division's failure to improve the rate of felony dispositions. One factor contributing to the rising post-merger felony backlog has been the decline in superior court informations (SCIs). Under New York law, felonies are prosecuted in Supreme Court pursuant to an indictment or an SCI. Prosecution by SCI requires that the defendant waive indictment by the grand jury and enter a guilty plea to the SCI. Notably, since merger the number of grand jury indictments in the Bronx has steadily risen, while the number of SCIs has declined by nearly a third. Because SCIs, unlike indictments, are disposed of at a very early stage of the felony proceeding, the decline in SCIs and corresponding increase in indictments have contributed to the number and age of the Court's pending felony caseload. The reason for the decline of SCIs is not clear.

Another important factor that has undermined the Criminal Division's productivity is the rise in Criminal Court arraignments, up 27% in the Bronx since 2004. As arrests have spiked, the court system's ability to comply with the 24-hour arrest-to-arraignment legal mandate has been severely strained. To meet the sharp upturn in arrests, judicial resources have had to be re-directed from court parts in the Criminal Division to arraignment parts in the Criminal Court.

INDICTMENTS AND SCIs IN BRONX SUPREME COURT



NEW YORK CITY CRIMINAL COURT-BRONX ARRAIGNMENTS



Notably, despite the transfer of misdemeanor cases from the Criminal Court to the Criminal Division and the simultaneous assignment of Criminal Court Judges to that Court, merger did not and could not create a true interchangeability of judges. Under the Criminal Procedure Law, most criminal actions in New York City can be commenced only in Criminal Court (only criminal actions commenced by the filing of a grand jury indictment against a defendant who has not been held by the Criminal Court for grand jury action may be brought directly in Supreme Court). Because jurisdiction over arraignments, therefore, had to remain in the Criminal Court, and because only two judges remained in the Criminal Court after merger to handle the rising volume of arraignments in the Bronx, Criminal Division judges have had to rotate through the Criminal Court on evenings, weekends and holidays to preside over arraignment parts. Moreover, managing this necessary rotation is made more difficult by the State Constitution, which places certain constraints on judicial assignments. Under the Constitution, neither elected Supreme Court Justices nor Court of Claims Judges can be assigned to the Criminal Court. Thus, there is a limited pool of judges available for temporary assignment to arraignment parts. Other than the newly elevated Criminal Court Judges, only those Criminal Division judges who previously had been designated as Acting Supreme Court Justices can sit in an arraignment part. In addition, at the time of the merger a greater proportion of the Court's judges were Acting Supreme Court Justices eligible to sit in an arraignment part. Thus, the burden of these assignments now falls on a smaller number of the Court's judges.

B. TRIAL CAPACITY

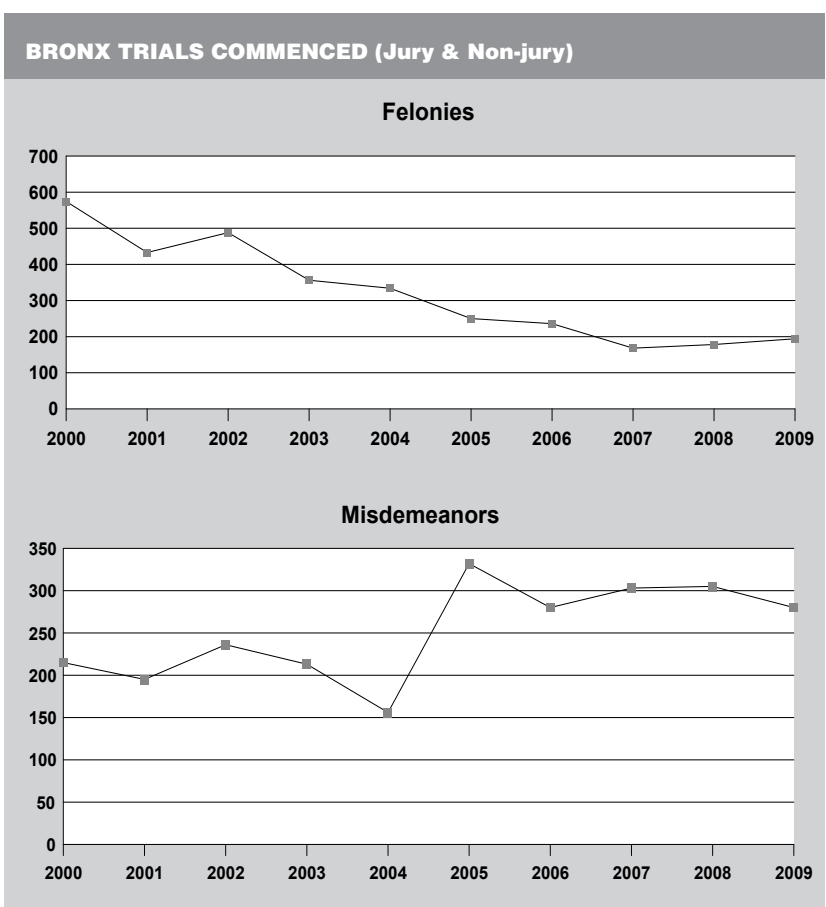
By far the most important reason for merger's lack of success in fulfilling its goal of timely felony dispositions is the same seemingly fundamental problem that bedevils timely dispositions in every other criminal court context: insufficient trial capacity. What ultimately drives the resolution of cases is the specter of an imminent trial – when that juncture is reached, pleas that have not been arrived at are finally offered and/or taken, or the matter is tried and thereby disposed of in that fashion. Accordingly, if a court does not have the capacity to try a sufficient number of cases, there will not be sufficient impetus to resolve cases. In general, the further away a date-certain trial looms, the longer it will take to dispose of a case.³ In this regard, merger's five-year record has been decidedly mixed. While merger

³ A snapshot view of Bronx Criminal Division cases over a five-week period in June and July 2009 supports the notion that the great majority of cases sent out to a trial part are quickly disposed of via guilty plea. During that period, 52 cases were sent from a motion/conference part to a trial part. Seventeen of those cases were tried, 33 were disposed of by guilty plea, one was adjourned in contemplation of dismissal and the other was dismissed on the recommendation of the District Attorney. Of the 33 guilty pleas, 23 (about 70%) were taken on the same day the case was sent to the trial part, or the day after. Seven other cases were sent from a motion/conference part to a trial part but had to be returned without a disposition. In those cases, the reason for the return was witness unavailability in three cases, a conflict on the part of the trial judge in one case, and unknown in the other three.

has markedly improved misdemeanor trial capacity – with the number of misdemeanor trials nearly doubling over this period – the number of felony trial trials has declined by 42%. Clearly, the merger experience so far underscores that Bronx County has lacked sufficient resources – in particular, sufficient judicial resources to try cases – to achieve backlog reduction for its combined misdemeanor and felony caseloads.

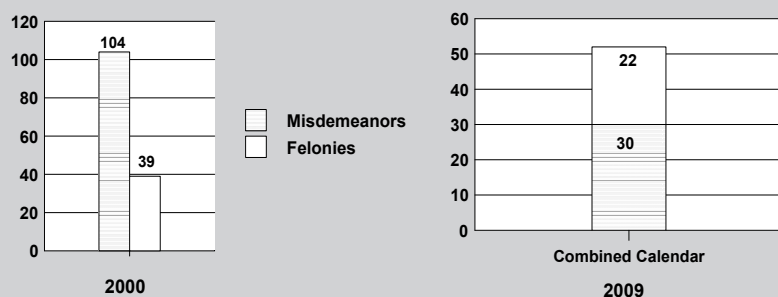
At present, the Criminal Division has 25 designated trial parts, but on any given day as few as 15 of the parts actually are hearing cases because there are not enough judges available to staff all of the parts. To a large degree, the lack of availability of trial judges stems from the need to assign judges to arraignment parts on evenings, weekends and holidays. But arraignment assignments also act as a drain on trial capacity in another fashion: judges cannot begin trials, especially felony trials, in the days immediately leading up to their assignment to an arraignment part (or to a motion/conference part to fill in for a judge from that part who was temporarily assigned to an arraignment part). In addition, where a judge re-assigned from a motion/conference part to an arraignment part has a regular calendar that is too large to be called along with another judge’s calendar, a trial part judge needs to be re-assigned in turn to cover that calendar while the motion/conference part judge is presiding over arraignments. In general, it appears that the current number of trial parts relative to the number of motion/conference parts may not be optimally calibrated given the crucial importance of trial capacity in meeting the paramount goal of resolving cases as fairly and expeditiously as possible.

A primary goal of merger was that more judges would be available to try cases, in particular misdemeanor cases, through the establishment of mixed trial parts that would allow misdemeanors to be tried during the gaps between longer felony trials. Although, as noted, the substantial increase in misdemeanor trials has been one of the real successes of merger, this has proven difficult, in part because of problems coordinating attorney schedules. In addition, as several judges who were interviewed noted, trial capacity is also influenced by

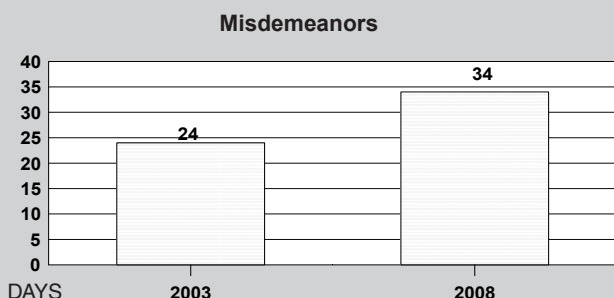


BRONX CALENDAR SIZE AND ADJOURNMENT LENGTH

Calendar Size



Median Number of Days Between Appearances



a factor that predates merger: the inordinately lengthy time it takes on average to select a felony case jury in the Bronx — 15 hours compared to about seven hours in other counties.

C. MOTION/CONFERENCE PARTS

Concurrent with mixed misdemeanor and felony trial parts, it was hoped that timely dispositions could also be promoted by having mixed misdemeanor and felony motion/conference parts. That does not appear to have occurred. Examination of the daily calendars in the Criminal Division's motion/conference parts reveals two troublesome, and related, dynamics: (1) the average daily calendars typically contain notably fewer cases compared to Supreme Court and Criminal Court calendars in the Bronx before merger; and (2) the

average length of adjournments in misdemeanor cases is significantly longer compared to misdemeanor adjournments in Criminal Court before merger. Although the reason for these trends is not entirely clear, an explanation suggested by several judges is that mixed calendars have led the Court to take a more or less uniform case management approach to the two types of cases. Indeed, the average length of adjournments in misdemeanor cases has expanded to that of adjournments in felony cases.

It is undisputed, however, that misdemeanor cases are generally less complex than felony cases. They usually demand less of the court's time, and normally they can be disposed of more quickly. Consequently, court parts that handle exclusively misdemeanor cases can accommodate a larger daily calendar than parts that handle exclusively felony cases. Similarly, adjournments between court appearances in misdemeanor cases generally should be shorter than those in felony cases. What seems to have occurred in the Criminal Division is that the combination of both types of cases on the same calendars has led to similar treatment of those cases. This failure to differentiate between the two types of cases has reduced the Court's productivity.

D. FACILITY ISSUES

Some measure of the disappointing caseload outcomes must be attributed to facility-related factors having nothing to do with merger itself. In February 2008, the new Bronx Hall of Justice became the home of the Supreme Court Criminal Division. Designed long before merger, the building is in important ways not particularly well-suited to the demands now being placed on it. The building now handles far more prisoners than it would have had it remained simply a separate Supreme Court. But certain aspects of its operation have contributed to the delays.

The physical layout of the new building presents problems with respect to timely admission of court users at the beginning of the day and upon return from lunch. The sheer volume of people entering the court creates long lines and makes it difficult to ensure that every case will be ready when the calendar is called. During these peak hours, court officers are pulled from their courtroom arraignments to handle this increased volume.

More critically, the building's design hampers the timely production of prisoners, often delaying the calling of cases involving incarcerated defendants until 10:30 or 11:00 a.m. Receiving prisoners into the building is a lengthy process. Incarcerated prisoners are brought by bus to a single intake area in the basement, where they are searched, their identifying pedigrees are obtained, and their records reviewed. Depending on which court part to which the case has been assigned, prisoners are then sent to one of five registration areas, where they are logged in and lodged in cells used for that particular register. At both the intake and register stages, the Department of Correction relies on handwritten forms – a time-consuming method – to obtain the intake pedigree and complete the registration process. Each register has its own elevator bank that services a certain number of courtroom parts vertically through the building. The elevators, however, are too small to permit more than several prisoners at a time to be brought up to or down from the courtrooms. As cases are called and prisoners are summoned to courtrooms, additional delays occur as court officers assigned to parts can only retrieve several incarcerated defendants at a time, and those prisoners then must be returned before new ones can be retrieved. With only five elevators in the Hall of Justice that can be used to transport prisoners to and from the basement, delays in case processing proliferate throughout the day. With as many as 300 prisoners a day needing to be brought into the courtrooms, timely production is very difficult and parts are frequently forced to stand idle.

V. Going Forward

MERGER HAS BEEN, IN SOME RESPECTS, A TREMENDOUS ACCOMPLISHMENT, a testament both to the dedication and industriousness of judges and non-judicial staff and to the willingness of our partners in the criminal justice system to work collaboratively toward ensuring the fair and timely resolution of criminal matters. The Criminal Division, however, can significantly improve its trial capacity and therefore its overall productivity with infusion of the new resources and adoption of the structural changes recommended below.

A. BOLSTERING ARRAIGNMENT OPERATIONS

A number of the judges interviewed urged that steps be taken to expand the judicial resources dedicated to the arraignment parts and to improve the efficiency of those parts. Although there is no alternative to continuing to assign Acting Supreme Court Justices to evening, weekend and holiday arraignment parts – with the resulting loss of time that those judges can devote to their primary assignments in the Criminal Division – the reliance on Acting Supreme Court Justices for that purpose can be reduced. Most important, either a newly-appointed judge or a judge from another county should be assigned to sit exclusively in the evening arraignment part. Brooklyn Criminal Court has greatly benefitted for some time from the exclusive assignment of a judge to night court. In the view of several of the judges interviewed, identifying a judge to do so in the Bronx, perhaps by soliciting volunteers (due to personal circumstances, some judges may prefer a regular nighttime assignment), would be similarly advantageous.

Another important step is to schedule a second weekend arraignment part only when absolutely necessary. A second weekend part may be necessary periodically to ensure compliance with the 24-hour arrest-to-arraignment requirement. Most weekends, however, the Court can meet that legal mandate without a second part. Toward the end of each week, the Administrative Judge's Office, the Citywide Arraignment Coordinator and the NYC Criminal Justice Coordinator's Office should continue to closely monitor the arrest numbers, and the Court, as it has, should schedule a second part only when it is clear that a single weekend arraignment part will not be able to accommodate the anticipated volume of cases.

Additionally, Civil Court Judges should be encouraged to volunteer to sit in weekend arraignment parts, including in the Bronx. Although some may not be interested, others might see this as an opportunity to diversify their judicial portfolio. In fact, a number of Civil Court Judges have recently volunteered to sit in arraignments, and they have been receiving training to do so.

Efforts should also be made to improve the efficiency of the arraignment parts. Judges (in the Bronx and elsewhere) have complained about the “downtime” in arraignment parts that results from the transition from the day session to the evening session as well as after the evening meal break. To address this concern, a “seamless” arraignment process was instituted in the Bronx earlier this year. A seamless arraignment process is simply a restructuring of the traditional day/evening arraignment shifts into a single, continuous session running from 9:00 a.m. to 1:00 a.m. This is accomplished by combining the day and evening shifts so that there is uninterrupted coverage in the part during this transition. To achieve this level of coverage, the District Attorney’s Office, the defense bar, the Police Department and the Department of Correction all agreed to stagger their staffs with respect to starting and finishing times and meals. Since its implementation, the seamless process has improved the efficiency of the arraignment parts. It should be continued.

An effort is also underway throughout the City to determine whether the evening arraignment parts can end earlier than 1:00 a.m., without a diminution in productivity and without running afoul of the 24-hour rule. As with the seamless arraignment process, cooperation of all the stakeholders will be necessary if this is to work. This evaluation is continuing.

B. STRENGTHENING THE MOTION/CONFERENCE PARTS

To avoid the seeming tendency to handle misdemeanors at the same pace as felonies, mixed caseloads in the motion/conference parts should be eliminated. The two types of cases should be handled in separate motion/conference parts; alternatively, the parts should handle felony cases and misdemeanor cases on separate days. In addition, calendar sizes in the motion/conference parts should be increased above their current levels, and adjournments between appearances in misdemeanor cases should be shortened to more closely approximate the average length of adjournments in misdemeanor cases before the merger. If successfully implemented, these steps could enable the Court to eliminate one or more of the motion/conference parts and thereby increase the number of its trial parts.

Given the dramatic success of the motion/conference part that functioned during the first year of the merger to handle older misdemeanor cases, that part should be re-established immediately, with a judge assigned to address misdemeanor cases beyond the standards and goals deadline. Because the full cooperation of the District Attorney’s Office is critical to the success of this part, the Administrative Judge should enlist the District Attorney’s support for reinstituting this part. If establishment of a separate part is not feasible, an existing motion/conference part should take on this responsibility.

Even more important, given the disturbing rise in the felony case backlog, the existing

motion/conference part staffed by a judicial hearing officer to address the oldest pending felony cases should instead be presided over by a judge. The part could be presided over by the Administrative Judge (or the Deputy Administrative Judge), so that it would not divert a judge from another existing part. The part would focus on achieving dispositions in these cases or, where disposition is not possible, sending the cases out to a trial part.

Consideration should be given to assigning judicial hearing officers to distinct misdemeanor/conference parts that handle driving while intoxicated, assault, and trespass cases. In the experience of several of the judges interviewed, these cases are far more likely to go to trial, and thus are typically repeatedly adjourned in the motion/conference parts.

Consideration should also be given to opening up the motion/conference part courtrooms at 9:15 in the morning. This earlier access would enable attorneys to apprise courtroom staff of any issues and problems they anticipate with that day's appearances. The courtroom would only be accessible to attorneys, and thus full security staffing would not be necessary.

C. ENHANCING TRIAL CAPACITY

As discussed, the most critical measure necessary to improve the Court's productivity is the enhancement of its trial capacity. Although its hybrid jurisdiction makes it unique among courts adjudicating criminal cases in this State, the Criminal Division is no different from other criminal courts in that its capacity to dispose of its cases flows directly from its ability to provide an imminent trial. If the Criminal Division lacks the ability to try a sufficient number of its cases, the parties will be under no pressure to resolve cases in an expeditious fashion.

Our analysis of Bronx County criminal disposition data reveals that, for every additional trial part added, an average of 490 additional dispositions are reached, either by trial or by plea in the trial part or by plea in a motion/conference part. Creating additional trial parts, therefore, can exponentially improve the Court's productivity, particularly with regard to its growing felony backlog. This can be accomplished in several ways. As explained above, the need to assign the Court's Acting Supreme Court Justices to evening and weekend arraignment parts creates an enormous drain on the Criminal Division's judicial resources, not only while Judges are sitting in arraignments but also during the week immediately before and the week immediately after such assignments. As many of the judges interviewed suggested, designating a Criminal Court Judge for a regular assignment in night court, encouraging Civil Court Judges to volunteer for weekend arraignment assignments, scheduling a second weekend arraignment part only when absolutely necessary, and instituting efficiencies in arraignment parts such as "seamless" arraignments, will go a long way toward reducing the amount of time the Criminal Division's Acting Supreme Court Justices must sit in arraignments, freeing them up to de-

vote more time to their Criminal Division caseloads, including more time to try cases.

In addition, as noted, along with the recent elimination of a part handling warrant cases and one of the three narcotics motion/conference parts, one or more additional motion/conference parts can be eliminated. This, too, will provide additional judges for assignment to trial parts.

Mixed misdemeanor and felony trial parts have demonstrated some success. Indeed, one of merger's primary accomplishments has been the surge in the number of misdemeanor trials. A key expectation of merger – that trial parts could try misdemeanor cases during the downtime when they were not occupied with a felony trial – has been borne out. Accordingly, the trial parts should continue to handle both categories of cases. To ensure maximum efficiency, however, the Court's expeditors must be aggressive and proactive. Expeditors are responsible, on behalf of the Administrative Judge, for assigning cases to the trial parts. This requires that they know on a day-to-day basis which trial parts are busy and which are not. Many of the judges interviewed concurred that expeditors will be most effective only if, every day, they walk the floors of the courthouse, speak directly with the trial part clerks and see for themselves first-hand what is happening in the trial parts.

Several of the judges interviewed suggested that misdemeanor trial capacity could be increased by assigning additional judicial hearing officers to try Class B misdemeanor cases. The Criminal Procedure Law authorizes JHOs to try these nonjury cases, upon consent of the parties. Assigning additional JHOs who have the confidence of the District Attorney's Office and the defense bar to this function can thus be very beneficial in helping reduce pending misdemeanor caseloads. For example, last year a Bronx JHO trial part conducted nearly 50 bench trials, not to mention the far larger number of plea dispositions that resulted from the availability of that part to try cases. These benefits can be maximized, moreover, if the District Attorney's Office reduces Class A misdemeanor charges to Class B misdemeanors at the earliest possible stage, in those cases in which it intends to do so.

These steps will enhance the Court's trial capacity. Ultimately, however, what will benefit the court the most is an infusion of additional judicial resources. If at all possible, court administrators should make every effort to identify additional judges to assign to the Criminal Division.

D. IMPROVING PRISONER PRODUCTION

As all of the judges interviewed pointed out, problems in producing prisoners have undermined the Court's productivity, particularly since its move in early 2008 to the Hall of Justice, a building never designed to handle the combined caseload of a merged criminal court. Poorly designed intake and holding cells, insufficient elevator capacity, and other facility-related problems have caused major difficulties in the day-to-day movement of prisoners

from cells to courtrooms and back. Although not much can be done about the inherent design conditions, several steps can be taken to minimize the prisoner production delays plaguing the Court.

Most important, efforts should be made to reduce the overall number of prisoners who must be produced at the courthouse each day. This can be accomplished by expanding the number of video court appearances. Under the Criminal Procedure Law, an incarcerated criminal defendant can agree to dispense with his or her physical appearance in court for a routine proceeding and instead “appear” by video from the jail. Defense lawyers have suggested that many more defendants would agree to video appearance if judges explained the procedure directly to defendants, emphasizing the advantages to the defendants of forgoing appearance at routine proceedings at which their physical presence in court is unnecessary. Aside from actively promoting video appearances, judges should also consider dispensing with the requirement that defendants (both incarcerated defendants and “out” defendants) appear in court for routine appearances. Both of these measures would considerably reduce the number of prisoners required to be produced at the courthouse each day, as well as reduce the overall traffic in the building.

Delays in processing prisoners within the basement holding facilities could be reduced if the Department of Correction instituted a bar scanning system for its processing of prisoner paperwork. This would eliminate the laborious process of signing every prisoner in and out at the various registers in the holding area. Discussions with corrections officials about the implementation of this technology should be held.

E. INCREASING COURT OFFICER STAFFING

Deployment of additional court officers to the Hall of Justice would promote more efficient processing of the Criminal Division’s cases. Although the current level of court officer staffing is sufficient to provide adequate security in the building, additional staffing at certain posts would help reduce delays in calling cases in the courtrooms. With merger there is a higher volume of people entering the courthouse each day, creating long lines that often delay the appearance of defendants, witnesses, and others in the courtrooms. The resulting strains on the lobby’s magnetometer operations could be relieved by assignment of additional officers there during the peak morning and post-lunch hour periods.

Increased court officer staffing would also speed production of prisoners to the courtrooms. Current officer staffing limits the number of prisoners who can be held in cells directly adjacent to the courtrooms, consequently increasing the number of time-consuming trips the officers must make to the basement holding area to retrieve prisoners. Increased staffing would allow for more prisoners – as many as eight at a time – to be held directly outside of the court parts, greatly accelerating their production to the courtroom.

Unfortunately, prevailing budgetary constraints preclude an increase in court officer staffing at the present time. When fiscal conditions improve, however, security staffing levels should be appropriately increased.

VI. Conclusion

WITH THE DEDICATED EFFORT OF JUDGES, court staff, and other criminal justice system participants, merger truly transformed, for the first time, two entirely separate courts of criminal jurisdiction into one. Despite its shortcomings as presently structured, the Criminal Division still retains promise as a vehicle for meeting Bronx County's challenges and ever-growing criminal caseloads. Merger has proven to be a fairly effective tool for maintaining misdemeanor caseloads at a reasonable level, despite a significant increase in filings. While it has not achieved the hoped-for goals with respect to felony caseloads, the steps outlined in this report can substantially improve its operating efficiency. With continued study and review, the lessons learned from the merger will no doubt prove invaluable not only to the Bronx Criminal Division but to criminal courts throughout New York as they struggle to meet the demands of their formidable caseloads.

Summary of Recommendations

BOLSTERING ARRAIGNMENT OPERATIONS

- Assign a new judge to sit exclusively in the evening arraignment part
- Use a second weekend arraignment part only when circumstances warrant
- Encourage Civil Court Judges to volunteer for the weekend arraignment part
- Continue the “seamless” arraignment process

STRENGTHENING THE MOTION/CONFERENCE PARTS

- Eliminate mixed felony and misdemeanor caseloads in the motion/conference parts
- Increase calendar sizes and reduce the length of adjournments in misdemeanor cases
- Dedicate a motion/conference part to handle older misdemeanor cases
- Dedicate a motion/conference part presided over by a judge to handle older felony cases

ENHANCING TRIAL CAPACITY

- Continue the use of mixed felony and misdemeanor trial parts, and ensure maximum productivity by having case expeditors take a more proactive role
- Assign additional judicial hearing officers to try Class B misdemeanors
- Make every effort to identify additional judges to assign to the Criminal Division

IMPROVING PRISONER PRODUCTION

- Reduce the number of prisoners produced at the courthouse by expanding video appearances
- Work with the Department of Correction to implement a bar code scanning system for processing prisoner paperwork

INCREASING COURT OFFICER STAFFING

- Deploy additional court officers to promote more efficient case processing

Appendix A

MEMBERS OF THE BRONX MERGER STUDY GROUP

Hon. Lawrence K. Marks, *Administrative Director, Unified Court System*

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Nancy Mangold, *Director, OCA Division of Court Operations*

James Imperatrice, *Chief Clerk, Kings County Supreme Court, Criminal Term*

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John Sullivan, *Assistant Deputy Counsel, Office of Court Administration*

Kevin Begley, *Case Management Coordinator, Queens County Supreme Court, Criminal Term*

Appendix B

PERSONS INTERVIEWED

Bronx Criminal Division Judges

Hon. Efrain Alvarado, *Administrative Judge, Bronx Criminal Division*

Hon. John P. Collins, *former Administrative Judge, Bronx Criminal Division*

Hon. Darcel D. Clark, *Supreme Court Justice, Bronx Criminal Division*

Hon. Joseph J. Dawson, *Acting Supreme Court Justice, Bronx Criminal Division*

Hon. Nicholas J. Iacovetta, *Acting Supreme Court Justice, Bronx Criminal Division*

Hon. Judith S. Lieb, *Acting Supreme Court Justice, Bronx Criminal Division*

Hon. Martin Marcus, *Court of Claims Judge and Acting Supreme Court Justice, Bronx Criminal Division*

Bronx Criminal Division Nonjudicial Staff

Steven B. Clark, *Chief Clerk, Bronx Criminal Division*

John Murray, *First Deputy Chief Clerk, Bronx Criminal Division*

William M. Kalish, *Deputy Chief Clerk, Bronx Criminal Court*

Major Jose Rodriguez, *Bronx Criminal Division*

Rick Bernstein, *Deputy Chief Clerk and Arraignment Coordinator, Bronx Criminal Division*

Stuart Sacks, *Trial Coordinator, Bronx Criminal Division*

Jeffrey Winkler, *Trial Coordinator, Bronx Criminal Division*

Martin Meaney, *Assistant Deputy Chief Clerk, Bronx Criminal Division*

Frank Tufano, *Assistant Deputy Chief Clerk, Bronx Criminal Division*

Frank Cupak, *System Coordinator, Bronx Criminal Division*

Roseann Siegel, *Principal Court Clerk, Bronx Criminal Division*

Harold McCabe, *Associate Court Clerk, Bronx Criminal Division*

William Reyes, *Associate Court Clerk, Bronx Criminal Division*

Michelle Foggie, *Senior Court Clerk, Bronx Criminal Division*

continued

PERSONS INTERVIEWED *continued*

Bronx County Defense Bar

David C. Clarke, Esq., *Attorney-In-Charge, Legal Aid Society, Bronx County*

Peter Jones, Esq., *Supervising Attorney, Legal Aid Society, Bronx County*

Marvin Raskin, Esq., *Bronx County Bar Association, Criminal Court Committee*

Robin G. Steinberg, Esq., *Executive Director, The Bronx Defenders*

Bronx County District Attorney's Office

Odalys C. Alonso, Esq., *Chief Assistant District Attorney*

Robert L. Dreher, Esq., *Executive Assistant District Attorney*

NYC Department of Correction

Katie Mulvey, *Warden*

Jacqueline Brantley, *Assistant Deputy Warden*

Ronnie Purvis, *Assistant Deputy Warden*

Appendix C

(rev. 3/08)

January, 2008

New York State Unified Court System Standards and Goals Guidelines for the Disposition of Criminal Cases	
Standards and Goals guideline are an administrative tool to assist the courts at every level in monitoring the progress of cases through the criminal court system. There are legitimate reasons where the ends of justice require that cases remain pending beyond the applicable guideline. However, having the standard and goals guidelines allows the court to track older cases so that they can be reviewed to determine whether or not such reasons exist. Delay should not be due to an administrative or operational condition that can be identified and corrected.	
Highest Charge Contained in Case	Time Frame for Final Disposition
Felony	180 Days from the filing of an Indictment or a Superior Court Information
Misdemeanor	90 Days from Arraignment
Violation	Expeditiously No set time standard

The New York State Unified Court system criminal standards and goals guidelines provide that cases in which the highest charge is a felony reach final disposition, such as a guilty plea, jury verdict or acquittal, within six months of the filing of an indictment or a superior court information. A case in which the highest charge is a misdemeanor should reach final disposition within ninety days of arraignment. A case in which the highest charge is a violation should reach final disposition expeditiously but no specific time frame is established.

Events that temporarily toll the standards and goals guidelines time period prior to final disposition are referred to as Interim Dispositions. The interim dispositions are described below:

Interim Dispositions:

1. The period between the date of issuance of a warrant of arrest for the defendant and the date the defendant is first brought before a New York court on return of the warrant.
2. The period between the date of issuance and the date of satisfaction of an order on behalf of the defendant or the People for a medical evaluation and determination pursuant to CPL 730.
3. **The period between the date of issuance and the date of satisfaction of an order on behalf of the defendant or the People for a medical evaluation and determination pursuant to CPL 250.10; provided, however, that such excluded period shall not exceed 90 days.**

4. **The period between the date of a stay of the trial of the accusatory instrument for the purposes of an appeal to the date the initial appeal or further appeals of the case to a higher court are determined. If the appeal is initiated by the People by the filing of that statement pursuant to CPL 450.50(1), then the period is between the date of the filing of that statement and the date the initial appeal and any further appeals of the case to a higher court are determined.¹**
5. The period between the date a defendant is ordered to participate in a Drug Treatment Court program or *other court approved treatment program* operated by the Unified Court System and the date of termination of such participation.
6. **If a plea of guilty is withdrawn, then the period between the date a plea of guilty is entered and the date the plea of guilty is ordered withdrawn.**
7. **The period between commencement of jury selection and termination of the trial of a co-defendant where a court has ordered that the defendant be tried separately from his/her co-defendant after the trial of the co-defendant.**
8. **The period during which a person is detained, voluntarily or involuntarily, in a hospital, health maintenance or mental health facility, or a non New York State correctional facility, or is confined at home with a medical or psychological condition certified by a physician.**
9. **The period during which the court is awaiting necessary documents or responses from courts or governmental entities located outside New York State. The excluded period begins on the day on which the request is sent to the other state and concludes on the day on which the reply is received.**
10. **The period during which a proceeding is stayed by order of the court because a witness or party is involved in military duty and is therefore unable to appear in court.**
11. **The period from the date a Blood Genetic Marker or DNA test is ordered to the date the results are filed with the court.**

Special Circumstances

In addition to the general guidelines listed above there are a number of special circumstances that impact the calculation of standards and goal guidelines.

1- Felony Complaints Converted to Misdemeanor for Disposition in Local Criminal Court:

The 90 day standards and goals guidelines period for Felony complaint subsequently converted to misdemeanors will begin at the point that the misdemeanor charge is filed with the local criminal court.

2- Felony Cases that Require a Trial Court to Conduct a Second Trial:

Felony cases returned to a courts trial calendar as a result of either a mistrial, including those resulting from a hung jury, or an appellate Division order for a new trial will have a new 90 day standards and goals time period within which to reach a final disposition. The new 90 day period would begin on the day of the mistrial or the appellate division order for a new trial.

¹ When appealing an order suppressing evidence, CPL §450.50 (1) requires the people to file a statement with the trial court. The statement must assert that the evidence suppressed has either rendered their available proof insufficient as a matter of law or so weakened it that the chance of a successful prosecution has been effectively destroyed

